

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 25, 2023

Honorable Richard J. Durbin
Chair
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your letter of April 20, 2023, inviting me to appear at a Senate Judiciary Committee hearing on May 2. I must respectfully decline your invitation.

Testimony before the Senate Judiciary Committee by the Chief Justice of the United States is exceedingly rare, as one might expect in light of separation of powers concerns and the importance of preserving judicial independence. The Supreme Court Library compilation of “Justices Testifying Before Congress in Matters Other Than Appropriations or Nominations” has identified only two prior instances – Chief Justice Taft in 1921 and Chief Justice Hughes in 1935. Both hearings involved routine matters of judicial administration relating to additional judgeships in the lower courts and jurisdiction over appeals from lower court injunctions. My predecessor, Chief Justice Rehnquist, appeared before House committees twice, also on mundane topics. In his first appearance, in 1989, before the House Committee on Post Office and Civil Service, he offered views on improvements to the federal civil service system. In 2004, he discussed the John Marshall Commemorative Coin Act at a hearing of the House Financial Services Committee. Neither Chief Justice Burger nor Chief Justice Warren nor Chief Justice Vinson ever appeared before a Congressional committee, though Chief Justice Warren did submit a prepared statement on federal employee salary increases to the Senate Post Office and Civil Service Committee in 1964. Congressional testimony from the head of the Executive Branch is likewise infrequent. According to the United States Senate website, no President has ever testified before the Senate Judiciary Committee, and only three Presidents (in 1862, 1919, and 1974) have testified before any Congressional committee.

In regard to the Court’s approach to ethics matters, I attach a Statement of Ethics Principles and Practices to which all of the current Members of the Supreme Court subscribe.

Respectfully,



Senator Lindsey Graham, Ranking Member

1 **Statement on Ethics Principles and Practices**

2 The undersigned Justices today reaffirm and restate foundational ethics principles and
3 practices to which they subscribe in carrying out their responsibilities as Members of the Supreme
4 Court of the United States. This statement aims to provide new clarity to the bar and to the public
5 on how the Justices address certain recurring issues, and also seeks to dispel some common
6 misconceptions.

7 The Justices, like other federal judges, consult a wide variety of authorities to address
8 specific ethical issues. They may turn to judicial opinions, treatises, scholarly articles, disciplinary
9 decisions, and the historical practice of the Court and the federal judiciary. They may also seek
10 advice from the Court’s Legal Office and from their colleagues.

11 In 1922, Congress instituted the Judicial Conference of the United States as an instrument
12 to manage the lower federal courts. The Judicial Conference, which binds lower courts, does not
13 supervise the Supreme Court. Nevertheless, for a century, the Conference has contributed to the
14 development of a body of ethical rules and practices—including through the lower court Code of
15 Conduct—which are of significant importance to the Justices.

16 As the Commentary to Canon 1 of the lower court code states, its provisions are “designed
17 to provide guidance to judges and nominees for judicial office.” Many of its aspirational
18 provisions “are necessarily cast in general terms, and judges may reasonably differ in their
19 interpretation.” The canons themselves are broadly worded principles that inform ethical conduct
20 and practices. But they are not themselves rules. They are far too general to be used in that
21 manner. Still, the canons and the Judicial Conference’s Code of Conduct as a whole provide
22 guidance to the federal judiciary.

23 In 1991, Members of the Court voluntarily adopted a resolution to follow the substance of
24 the Judicial Conference Regulations. Since then Justices have followed the financial disclosure
25 requirements and limitations on gifts, outside earned income, outside employment, and honoraria.
26 They file the same annual financial disclosure reports as other federal judges. Those reports
27 disclose, among other things, the Justices’ non-governmental income, investments, gifts, and
28 reimbursements from third parties. For purposes of sound administration, the Justices, like lower
29 court judges, file those reports through the Judicial Conference’s Committee on Financial
30 Disclosure. That Committee reviews the information contained in these reports and either finds
31 them to be in compliance with applicable laws and regulations or sends a letter of inquiry if
32 additional information is needed to make that determination. More generally, the Committee
33 provides guidance on the sometimes complex reporting requirements. Just last month, for
34 example, it provided clarification on the scope of the “personal hospitality” exemption to the
35 disclosure rules. Allegations of errors or omissions in the filing of financial disclosure reports are
36 referred by the Secretary of the Judicial Conference to the Committee on Financial Disclosure.
37 The Committee may send the filer a letter of inquiry, providing an opportunity for the filer to
38 respond as appropriate.

39 In regard to the financial disclosure requirements relating to teaching and outside earned
40 income, the Justices may not accept compensation for an appearance or a speech, but may be paid
41 for “teaching a course of study at an accredited educational institution or participating in an
42 educational program of any duration that is sponsored by such an institution and is part of its
43 educational offering.” Outside Earned Income Regs. § 1020.35(b). As the Commentary to Canon
44 4 of the lower court code observes, “As a judicial officer and a person specially learned in the law,

1 a judge is in a unique position to contribute to the law, the legal system, and the administration of
2 justice,” including through teaching. Associate Justices must receive prior approval from the Chief
3 Justice to receive compensation for teaching; the Chief Justice must receive prior approval from
4 the Court. *See* Resolution ¶ 3 (Jan. 18, 1991). Justices may not have outside earned income—
5 including income from teaching—in excess of an annual cap established by statute and regulation.
6 In calendar year 2023, that cap works out to less than 12 percent of a Justice’s pay. Compensation
7 for writing a book is not subject to the cap.

8 Like lower court judges, Justices also engage in extrajudicial activities other than teaching,
9 including speaking, writing, and lecturing on both law-related and non-legal subjects. In fact, the
10 lower court canons encourage public engagement by judicial officers to avoid isolation from the
11 society in which they live and to contribute to the public’s understanding of the law. But in
12 deciding whether to speak before any group, a Justice should consider whether doing so would
13 create an appearance of impropriety in the minds of reasonable members of the public. There is
14 an appearance of impropriety when an unbiased and reasonable person who is aware of all relevant
15 facts would doubt that the Justice could fairly discharge his or her duties. Except in unusual
16 circumstances, no such appearance will be created when a Justice speaks before a group associated
17 with an educational institution, a bar group, or a nonprofit group that does not regularly engage in
18 advocacy or lobbying about issues that may be implicated in cases that come before the Court.

19 In regard to recusal, the Justices follow the same general principles and statutory standards
20 as other federal judges, but the application of those principles can differ due to the unique
21 institutional setting of the Court. In some instances the Justices’ recusal standards are more
22 restrictive than those in the lower court Code or the statute—for example, concluding that recusal
23 is appropriate where family members served as lead counsel below. A recusal consideration
24 uniquely present for Justices is the impairment of a full court in the event that one or more members
25 withdraws from a case. Lower courts can freely substitute one district or circuit judge for another.
26 The Supreme Court consists of nine Members who always sit together. Thus, Justices have a duty
27 to sit that precludes withdrawal from a case as a matter of convenience or simply to avoid
28 controversy. *See United States v. Will*, 449 U.S. 200, 217 (1980) (28 U.S.C. § 455 does not alter
29 the rule of necessity); ABA, Model Code of Judicial Conduct § 2.11 cmt. (“The rule of necessity
30 may override the rule of disqualification.”). Individual Justices, rather than the Court, decide
31 recusal issues. If the full Court or any subset of the Court were to review the recusal decisions of
32 individual Justices, it would create an undesirable situation in which the Court could affect the
33 outcome of a case by selecting who among its Members may participate.

34 Recusals are noted in the Court’s decisions, both at the certiorari and merits stages. In
35 recent years, there have been approximately 200 recusals per year at the certiorari stage and a few
36 at the merits stage as well. In many instances, the grounds for recusal will be obvious—for
37 example, when recusal is due to a Justice’s prior employment as a circuit judge or in the Office of
38 the Solicitor General. In some cases, public disclosure of the basis for recusal would be ill-advised.
39 Examples include circumstances that might encourage strategic behavior by lawyers who may seek
40 to prompt recusals in future cases. Where these concerns are not present, a Justice may provide a
41 summary explanation of a recusal decision, *e.g.*, “Justice X took no part in the consideration or
42 decision of this petition. *See* Code of Conduct, Canon 3C(1)(c) (financial interest)” or “Justice Y
43 took no part in the consideration or decision of this petition. *See* Code of Conduct, Canon 3C(1)(e)
44 (prior government employment”). A Justice also may provide an extended explanation for any

1 decision to recuse or not recuse. *See, e.g., Microsoft Corp. v. United States*, 530 U.S. 1301 (2000)
2 (Rehnquist, C.J.).

3 A word is necessary concerning security. Judges at all levels face increased threats to
4 personal safety. These threats are magnified with respect to Members of the Supreme Court, given
5 the higher profile of the matters they address. Recent episodes confirm that such dangers are not
6 merely hypothetical. Security issues are addressed by the Supreme Court Police, United States
7 Marshals, state and local law enforcement, and other authorities. Matters considered here
8 concerning issues such as travel, accommodations, and disclosure may at times have to take into
9 account security guidance.

John G. Roberts, Jr.

Clarence Thomas

Samuel A. Alito, Jr.

Sonia Sotomayor

Elena Kagan

Neil M. Gorsuch

Brett M. Kavanaugh

Amy Coney Barrett

Ketanji Brown Jackson

1 **Appendix – List of Judicial Ethics Authorities**

- 2 • Ethics in Government Act. The Ethics in Government Act (EIGA) requires
3 “judicial officers” to file financial disclosure reports listing outside positions,
4 agreements, non-investment income, reimbursements, gifts, liabilities, and
5 investments. *See* 5 U.S.C. § 13103(d), (f)(11). “Judicial officer” means “the
6 Chief Justice of the United States, the Associate Justices of the Supreme Court,
7 and the judges of the United States courts of appeals [and] United States district
8 courts.” 5 U.S.C. § 13101(10). The Judicial Conference administers the statute in
9 the case of judicial officers, and has delegated that authority to the Committee on
10 Financial Disclosure. *See* 5 U.S.C. § 13102(a)(3); Guide to Judiciary Policy, Vol.
11 2D § 120. The Courthouse Ethics and Transparency Act, Pub. L. 117-125, 136
12 Stat. 1205 (May 13, 2022), requires judicial officers to file periodic transaction
13 reports reflecting transactions in stocks, bonds, commodities futures, and other
14 forms of securities, in addition to annual financial disclosures, and that the
15 Administrative Office of the U.S. Courts make such reports publicly available.
16 The EIGA also places limits on outside earned income, honoraria and
17 employment. *See* 5 U.S.C. §§ 13143-44. The Judicial Conference has adopted
18 regulations for lower court federal judges relating to outside earned income,
19 honoraria, and employment. *See* Guide to Judiciary Policy, Vol. 2C §
20 1020.20(a)(10). The Justices comply with the substance of those regulations. *See*
21 S.Ct. Resolution (Jan. 18, 1991).
22
- 23 • Federal Gift Statute. “[N]o . . . officer . . . of the . . . judicial branch shall solicit
24 or accept anything of value from a person . . . seeking official action from [or]
25 doing business with . . . the individual’s employing entity; or . . . whose interests
26 may be substantially affected by the performance or nonperformance of the
27 individual’s official duties.” 5 U.S.C. § 7353(a). *See also* 5 U.S.C. § 7351 (gifts
28 to supervisors). The Judicial Conference has promulgated gift regulations that
29 govern lower court federal judges. *See* Guide to Judiciary Policy, vol. 2C §
30 620.20. The Justices resolved to comply with the substance of the regulations.
31 *See* S.Ct. Resolution (Jan. 18, 1991).
32
- 33 • The Foreign Gifts and Decorations Act. The Foreign Gifts and Decorations Act
34 prohibits an employee from accepting gifts of more than minimal value from
35 foreign governments and imposes reporting requirements on the acceptance of
36 such gifts. An “employee” includes an individual who is engaged in the
37 performance of a federal function under authority of law. *See* 5 U.S.C.
38 §§ 7342(a)(1)(A); 2105(a)(2); U.S. Const., art. I, § 9, cl. 8. The Judicial
39 Conference has adopted foreign gift regulations that apply to officers of the
40 judicial branch. *See* Guide to Judiciary Policy, vol. 2C § 710. The Justices
41 resolved to comply with the statute. *See* S.Ct. Resolution (Jan. 15, 1993).
42
- 43 • Honorary Club Memberships. Judicial officers may not accept a gift of an
44 honorary club membership valued at over \$50 per calendar year. *See* Pub. L. 110-

1 402, § 2(b), 122 Stat. 4254 (Oct. 13, 2008). “Judicial officer” means the Justices
2 and lower federal court judges. *Id.* § 2(a)(2); 5 U.S.C. § 13101(10). The Justices
3 comply with the statute.
4

5 • Federal Recusal Statute. 28 U.S.C. § 455 provides recusal standards for
6 “justice[s] [and] judge[s] . . . of the United States.” The Chief Justice has stated
7 that “the limits of Congress’s power to require recusal have never been tested.
8 The Justices follow the same general principles as other federal judges, but the
9 application of those principles can differ due to the unique circumstances of the
10 Supreme Court.” C.J. Roberts 2011 Year-End Rpt. at 7. First, there is no higher
11 court to review the Justices’ recusal decisions. Second, because recused Justices
12 cannot be replaced, a Justice cannot withdraw from a case as a matter of
13 convenience or simply to avoid controversy. In 1993, a Statement of Recusal
14 Policy addressed recusal issues where members of a Justice’s family were
15 practicing attorneys. *See* Statement of Recusal Policy (Nov. 1, 1993).
16

17 • Code of Conduct for U.S. Judges. The Code of Conduct for U.S. Judges applies
18 by its terms only to lower court federal judges. *See* Code of Conduct for U.S.
19 Judges, Introduction. The Court nonetheless takes guidance from the Code.
20

21 • IPO Purchases and Discussions with Prospective Private Employers. The Stop
22 Trading On Congressional Knowledge Act of 2012, Pub. L. 112-105 §§ 12, 17,
23 126 Stat. 291 (Apr. 4, 2012), provides that Justices and lower court federal judges
24 may not “purchase securities that are the subject of an initial public offering . . . in
25 any manner other than is available to members of the public generally.” Pub. L.
26 112-105 § 12. The Act also provides that Justices and lower court judges who are
27 negotiating agreements with private entities for post-judicial employment or
28 compensation, or who have made such agreements, must file statements with the
29 individual’s supervising ethics office within three days that include “the name of
30 the private entity or entities involved in such negotiations or agreement, and the
31 date such negotiations or agreement commenced.” *Id.* § 17. The Justices follow
32 the statute.